

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   LAVERN CHARLES FASTHORSE,

Case No.: 2:19-cv-00196-APG-NJK

4                                   Plaintiff,

**ORDER**

5   v.

6   HERNANDEZ, et al.,

7                                   Defendants.

8           This action is a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a state  
9 prisoner. On March 28, 2019, Magistrate Judge Koppe ordered plaintiff Lavern Fasthorse to file  
10 a complete application to proceed *in forma pauperis*, including both an inmate account statement  
11 and a properly executed financial certificate or pay the full filing fee of \$400.00 by April 29,  
12 2019. ECF No. 5 at 2. Fasthorse has not filed a complete application, paid the full filing fee, or  
13 otherwise responded to the order.

14          District courts have the inherent power to control their dockets and “[i]n the exercise of  
15 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.  
16 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may  
17 dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to  
18 obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-  
19 54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d  
20 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
21 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for  
22 failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address);  
23 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply

1 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack  
2 of prosecution and failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey a  
4 court order, or failure to comply with local rules, I must consider several factors: (1) the public's  
5 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the  
6 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
7 merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;  
8 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;  
9 *Ghazali*, 46 F.3d at 53.

10 Here, the first two factors (the public's interest in expeditiously resolving this litigation  
11 and the Court's interest in managing the docket) weigh in favor of dismissal. The third factor  
12 (risk of prejudice to the defendants) also weighs in favor of dismissal because a presumption of  
13 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
14 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
15 fourth factor (public policy favoring disposition of cases on their merits) is greatly outweighed  
16 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his  
17 failure to obey the court's order will result in dismissal satisfies the "consideration of  
18 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,  
19 779 F.2d at 1424. Magistrate Judge Koppe's order expressly stated: "IT IS FURTHER  
20 ORDERED that, if Plaintiff does not timely comply with this order, dismissal of this action may  
21 result." ECF No. 5 at 2. Thus, Fasthorse had adequate warning that dismissal would result from  
22 his noncompliance with Magistrate Judge Koppe's order.

1 It is therefore ordered that this action is dismissed without prejudice based on Fasthorse's  
2 failure to file a complete application to proceed *in forma pauperis* or pay the full filing fee in  
3 compliance with Magistrate Judge Koppe's March 28, 2019 order.

4 It is further ordered that the Clerk of Court shall enter judgment accordingly.

5 Dated: May 17, 2019.

6  
7   
8 \_\_\_\_\_  
9 ANDREW P. GORDON  
10 UNITED STATES DISTRICT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23